

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

ELLIS CARROLL BROWN, III,)	
)	
Movant,)	
)	
v.)	No. 4:22-cv-00654-AGF
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

MEMORANDUM AND ORDER

This matter is before the Court on movant’s motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255. For the following reasons, movant’s motion will be dismissed without prejudice as premature.

Movant has filed his § 2255 habeas motion while his underlying criminal appeal is pending. “Ordinarily resort cannot be had to 28 U.S.C. § 2255 or habeas corpus while an appeal from conviction is pending.” *Masters v. Eide*, 353 F.2d 517, 518 (8th Cir. 1965). An exception to this rule exists for “extraordinary circumstances.” Adv. Comm. Notes to Rule 5 of the Rules Governing § 2255 Proceedings. “Whether extraordinary circumstances exist is a question the answer to which depends upon the need for speedy relief against the need for conservation of judicial resources.” *United States v. Davis*, 604 F.2d 474, 485 (7th Cir. 1979).

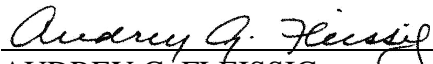
Movant is challenging his criminal conviction for deprivation of rights under color of law. *See United States v. Brown, III*, No. 4:20-cr-380-AGF (E.D. Mo.). On November 22, 2021, the Court sentenced movant to 72 months of imprisonment. On December 6, 2021, movant appealed his conviction to the Eighth Circuit Court of Appeals. *See United States v. Brown*, No. 21-3807 (8th Cir. filed Dec. 6, 2021). Movant’s appeal is still pending. Movant has not demonstrated any

need for speedy relief. As a result, his habeas motion is dismissed without prejudice pending the resolution of the appellate proceedings.

IT IS HEREBY ORDERED that movant's motion to vacate, set aside, or correct sentence is **DISMISSED without prejudice**.

An Order of Dismissal will accompany this Memorandum and Order.

Dated this 24th day of June 2022.



AUDREY G. FLEISSIG
UNITED STATES DISTRICT JUDGE